STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

███████
██████
████████

DECISION

FOP/172687

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 14, 2016, at Appleton, Wisconsin.

The issue for determination is whether the petitioner timely appealed the FoodShare (FS) overpayments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

███████
██████
████████   █

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
        By: ███████
            Outagamie County Department of Human Services
            401 S. Elm Street
            Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:
Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1.   The petitioner (CARES # ████████) is a resident of Outagamie County.

2.   On November 17, 2015 the agency sent the petitioner notices stating the following:

    a. She was overpaid $618 in FoodShare (FS) benefits, under claim number ████████ , in December 2010.

b. She was overpaid $618 in FS benefits, under claim number ▮▮▮▮▮▮, in January 2011.

c. She was overpaid $4,964 in FS benefits, under claim number ▮▮▮▮▮▮, from February 1, 2011 to October 31, 2011.

d. She was overpaid $1,059 in FS benefits, under claim number ▮▮▮▮▮▮, from November 1, 2011 to December 31, 2011.

e. She was overpaid $6,905 in FS benefits, under claim number ▮▮▮▮▮▮, from January 1, 2012 to December 31, 2012.

f. She was overpaid $11,320 in FS benefits, under claim number ▮▮▮▮▮▮, from January 1, 2013 to December 31, 2013.

g. She was overpaid $9,950 in FS benefits, under claim number ▮▮▮▮▮▮, from January 1, 2014 to November 30, 2014.

h. She was overpaid $1,542 in FS benefits, under claim number ▮▮▮▮▮▮, from December 1, 2014 to January 31, 2015.

3. On March 8, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

An Administrative Law Judge can only hear cases on the merits if there is jurisdiction. There is no jurisdiction if a hearing request is untimely. The agency is required to give written notice of the negative action concerning a FoodShare (FS) overpayment. 7 C.F.R. § 273.18(e)(3)(iii). One purpose of the notice is to advise a person that he or she has 90 days from the date of the notice to submit a request for a fair hearing. 7 C.F.R. § 273.18(g), WI Admin Code §HA 3.05(3)(a), *FoodShare Wisconsin Handbook*, § 6.4.1.

The agency sent the petitioner the notices of overpayments on November 17, 2015. The notices were sent to the correct address. The petitioner did not file her Request for Fair Hearing until March 8, 2015. This is beyond her appeal deadline. Thus, I must conclude that her request is untimely, and that I am without jurisdiction to decide the FS overpayment.

Even if I had jurisdiction, I would decide that the overpayment was correct. This overpayment arose because the petitioner operated an illegal ▮▮▮ lottery and as well as other illegal gambling activities. The income generated from these illegal sources was never reported to the agency. The petitioner was arrested and convicted of running a gambling ring in Minnesota. As a result of that arrest, the ▮▮▮▮▮ Police Department obtained a search warrant for the petitioner's home and business. During their search, they found numerous items related to the petitioner's illegal gambling activities. The ledger book from the ▮▮▮ lottery is summarized on the spreadsheet in Exhibit 39. This spreadsheet was prepared by the ▮▮▮▮▮ Police Department during their investigation. This spreadsheet reflects some of the petitioner's income from her illegal activities. Using only the income on the spreadsheet from the ▮▮▮ lottery the petitioner was not eligible for FS benefits during these overpayment periods.

CONCLUSIONS OF LAW

The petitioner's appeal of the FS overpayments is untimely.

THEREFORE, it is <u>**ORDERED**</u>

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.
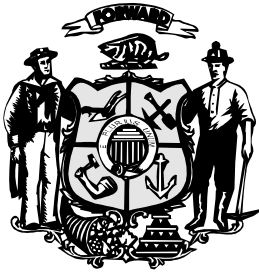
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 19th day of April, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on April 19, 2016.

Outagamie County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability